

AMENDED IN ASSEMBLY JULY 29, 2002

AMENDED IN SENATE MAY 15, 2002

AMENDED IN SENATE APRIL 15, 2002

**SENATE BILL**

**No. 2093**

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**Introduced by Senator Speier**

March 12, 2002

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An act to amend Sections 12376 and 12377 of, *and to repeal and add Article 1 (commencing with Section 11690) of Chapter 3 of Part 3 of Division 2 of*, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 2093, as amended, Speier. ~~Underwritten title companies; insolvency- Insolvency.~~

(1) Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law provides that every insurer desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance shall maintain on file with the commissioner a bond, or a cash deposit in lieu of a bond, in favor of the commissioner as trustee for the beneficiaries of awards of compensation against the insurer, to the extent of that reinsurance. Existing law sets forth various requirements with respect to these provisions.

This bill would repeal these provisions and enact new provisions regulating insurers desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance.

(2) Existing law provides for the regulation of title insurers and underwritten title companies by the Insurance Commissioner. Existing

law provides that if an underwritten title company is placed into bankruptcy, receivership, or conservatorship by the commissioner and there is a shortage in a subescrow or escrow account, each title insurer operating under an underwriting agreement with the underwritten title company during the previous 6 months shall be liable for a proportionate share of the shortage.

This bill would also require an affected title insurer to be liable for a proportionate share of certain costs and expenses of the commissioner in administering the insolvency and in advancing funds from the Insurance Fund to temporarily cover a subescrow or escrow account shortage, which advances the bill would authorize. The bill would provide that a title insurer has a preferred claim for reimbursement of these payments from assets of the insolvent entity. The bill would enact other related provisions.

(3) *This bill would make the operation of its provisions contingent upon the enactment of AB 2007.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Article 1 (commencing with Section 11690) of*  
2 *Chapter 3 of Part 3 of Division 2 of the Business and Professions*  
3 *Code is repealed.*

4 SEC. 2. *Article 1 (commencing with Section 11690) is added*  
5 *to Chapter 3 of Part 3 of Division 2 of the Business and Professions*  
6 *Code, to read:*

7  
8 *Article 1. Deposits by Workers' Compensation Insurers*  
9

10 *11690. For purposes of this article:*

11 (a) *"Compensable workers' compensation claim" means a*  
12 *claim where the claimant is entitled to benefits under the workers'*  
13 *compensation law of the state.*

14 (b) *"Delinquency proceeding" means any proceeding*  
15 *commenced against an insurer for the purpose of liquidating,*  
16 *rehabilitating, reorganizing, or conserving that insurer, where*  
17 *there has not been a court order finding the insurer insolvent.*

18 (c) *"Receiver" means liquidator, rehabilitator, or conservator,*  
19 *as appropriate.*



1 11691. (a) In order to provide protection to the workers of  
2 this state in the event that the insurers issuing workers'  
3 compensation insurance to employers fail to pay compensable  
4 workers' compensation claims, when due, except in the case of the  
5 State Compensation Insurance Fund, every insurer desiring  
6 admission to transact workers' compensation insurance, or  
7 workers' compensation reinsurance business, or desiring to  
8 reinsure the injury, disablement, or death portions of policies of  
9 workers' compensation insurance under the class of disability  
10 insurance shall, as a prerequisite to admission, or ability to  
11 reinsure the injury, disablement, or death portion of policies of  
12 workers' compensation insurance under the class of disability  
13 insurance, deposit cash instruments or approved interest-bearing  
14 securities or approved stocks readily convertible into cash,  
15 investment certificates, or share accounts issued by a savings and  
16 loan association doing business in this state and insured by the  
17 Federal Deposit Insurance Corporation, certificates of deposit or  
18 savings deposits in a bank licensed to do business in this state, or  
19 approved securities registered with a qualified depository located  
20 in a reciprocal state as defined in Section 1104.9. The deposit shall  
21 be made from time to time as demanded by the commissioner and  
22 may be made with the Treasurer, or a bank or savings and loan  
23 association authorized to engage in the trust business pursuant to  
24 Division 1 (commencing with Section 99) or Division 2  
25 (commencing with Section 5000) of the Financial Code, or a trust  
26 company. A deposit of securities registered with a qualified  
27 depository located in a reciprocal state as defined in Section  
28 1104.9 may only be made in a bank or savings and loan association  
29 authorized to engage in the trust business pursuant to Division 1  
30 (commencing with Section 99) or Division 2 (commencing with  
31 Section 5000) of the Financial Code, or a trust company, licensed  
32 to do business and located in this state that is a qualified custodian  
33 as defined in paragraph (1) of subdivision (a) of Section 1104.9  
34 and that maintains deposits of at least seven hundred fifty million  
35 dollars (\$750,000,000). The deposit shall be made subject to the  
36 approval of the commissioner under those rules and regulations  
37 that he or she shall promulgate. The deposit shall be maintained  
38 at a deposit value specified by the commissioner, but in any event  
39 no less than one hundred thousand dollars (\$100,000), nor less  
40 than the reserves required of the insurer to be maintained under

1 any of the provisions of Article 1 (commencing with Section 11550)  
2 of Chapter 1 of Part 3 of Division 2, relating to loss reserves on  
3 workers' compensation business of the insurer in this state, nor  
4 less than the sum of the amounts specified in subdivision (a) of  
5 Section 11693, whichever is greater. The deposit shall be for the  
6 purpose of paying compensable workers' compensation claims  
7 under policies issued by the insurer or reinsured by the admitted  
8 reinsurer and expenses as provided in Section 11698.02, in the  
9 event the insurer or reinsurer fails to pay those claims when they  
10 come due.

11 (b) Each insurer or reinsurer desiring to have the ability to  
12 reinsure the injury, disablement, or death portions of policies of  
13 workers' compensation under the class of disability insurance  
14 shall provide prior notice to the commissioner, in the manner and  
15 form prescribed by the commissioner of its intent to reinsure that  
16 insurance. In the event of late notice, a late filing fee shall be  
17 imposed on the reinsurer pursuant to Section 924 for failure to  
18 notify the commissioner of its intent to reinsure workers'  
19 compensation insurance.

20 (c) If the deposit required by this section is not made with the  
21 Treasurer, then the depositor shall execute a trust agreement in a  
22 form approved by the commissioner between the insurer, the  
23 institution in which the deposit is made or, where applicable, the  
24 qualified custodian of the deposit, and the commissioner, that  
25 grants to the commissioner the authority to withdraw the deposit  
26 as set forth in Sections 11691.2, 11696, 11698 and 11698.3. The  
27 insurer shall also execute and deliver in duplicate to the  
28 commissioner a power of attorney in favor of the commissioner for  
29 the purposes specified herein, supported by a resolution of the  
30 depositor's board of directors. The power of attorney and  
31 director's resolution shall be on forms approved by the  
32 commissioner; shall provide that the power of attorney cannot be  
33 revoked or withdrawn without the consent of the commissioner;  
34 and shall be acknowledged as required by law.

35 (d) The commissioner shall require payment of one hundred  
36 eighteen dollars (\$118) in advance as a fee for the initial filing of  
37 a trust agreement with a bank, savings and loan association, or  
38 trust company on deposits made pursuant to subdivision (a). An  
39 additional fee of one hundred eighteen dollars (\$118) shall be  
40 payable for each amendment, supplement, or other change to the

1 *deposit agreement. In addition, the commissioner shall require the*  
2 *payment of fifty-eight dollars (\$58) in advance for receiving and*  
3 *processing deposit schedules pursuant to this section. An*  
4 *additional fee of twenty-nine dollars (\$29) shall be payable for*  
5 *each withdrawal, substitution, or any other change in the deposit.*

6 *(e) Any workers' compensation insurer that deposits cash or*  
7 *cash equivalents pursuant to this section shall be entitled to a*  
8 *prompt refund of those deposits in excess of the amount determined*  
9 *by the commissioner pursuant to subdivision (a). The*  
10 *commissioner shall cause to be refunded any deposits determined*  
11 *by the commissioner to be in excess of the amount required by*  
12 *subdivision (a) within 30 days of that determination. In the*  
13 *alternative, an insurer may use any excess deposit funds to offset*  
14 *a demand by the commissioner to increase its deposit due to the*  
15 *failure of a reinsurer to make a deposit pursuant to this section.*

16 *(f) (1) No deposit required by this section may be reduced on*  
17 *account of ceded reinsurance on claims and obligations incurred*  
18 *on or after January 1, 2002, unless the reinsurance is secured by*  
19 *funds withheld from the reinsurer by the ceding insurer in an*  
20 *amount equal to the deposit credit claimed by the ceding insurer.*

21 *(2) Deposit credits claimed by the ceding insurer for claims and*  
22 *obligations incurred prior to January 1, 2002, shall be reduced in*  
23 *accordance with the following schedule and replaced and secured*  
24 *by funds withheld:*

25 *(A) Twenty percent as of January 1, 2004.*

26 *(B) Forty percent as of January 1, 2005.*

27 *(C) Sixty percent as of January 1, 2006.*

28 *(D) Eighty percent as of January 1, 2007.*

29 *(E) One hundred percent as of January 1, 2008.*

30 *(3) The ceding insurer shall include in its required deposit, in*  
31 *assets authorized by this section, an amount equal to the funds*  
32 *withheld, and the amount of the deposit required of the reinsurer*  
33 *shall be reduced by an equal amount.*

34 *(g) Notwithstanding the provisions of Sections 922.4 and*  
35 *922.5, if a ceding insurer has not secured the reinsurance with*  
36 *funds withheld from the reinsurer as provided by this section, the*  
37 *commissioner may disallow all or a portion of the reserve credits*  
38 *claimed by the ceding insurer.*

39 *(h) If a reinsurer has not maintained deposits as required by*  
40 *subdivision (a), in amounts equal to the amounts of deposit credits*

1 *claimed by its ceding insurers for claims and obligations incurred*  
2 *prior to January 1, 2002, the commissioner, after notifying the*  
3 *insurer and its ceding insurers of the deposit shortfall and allowing*  
4 *15 days from the date of the notice for the deposit shortfall to be*  
5 *corrected, may disallow all or a portion of the reserve credits*  
6 *claimed by the ceding insurers. A ceding insurer disallowed a*  
7 *reserve credit pursuant to this provision shall immediately make*  
8 *the deposit required by this section. On January 1, 2008, this*  
9 *subdivision shall be superseded in its entirety by subdivision (f)*  
10 *and it shall be inoperative on and after that date.*

11 *11691.1. The fees for filing a schedule of securities with the*  
12 *Treasurer, and making a deposit of the same, and for each*  
13 *withdrawal, substitution, or any other change in the securities*  
14 *comprising this deposit with the Treasurer, shall be paid to the*  
15 *commissioner for the costs of review and approval of deposits, and*  
16 *shall be the same as are prescribed by Article 11 (commencing with*  
17 *Section 939) of Chapter 1 of Part 2 of Division 1.*

18 *All other reasonable charges made by the Treasurer for*  
19 *servicing securities deposited with him or her shall be paid to the*  
20 *Treasurer by the insurer that has deposited the security, and shall*  
21 *not be charged to the commissioner.*

22 *11691.2. The deposit required pursuant to Section 11691 shall*  
23 *be security for the payment of the insurer's obligations on worker's*  
24 *compensation insurance transacted in this state. The deposit shall*  
25 *not be withdrawn except upon the written order of the*  
26 *commissioner to use the proceeds thereof in payment of*  
27 *compensable worker's compensation claims and expenses as*  
28 *provided in Section 11698.02, or as otherwise provided in this*  
29 *article, but shall be forthwith payable to the commissioner or at the*  
30 *direction of the commissioner by the Treasurer or the bank, savings*  
31 *and loan association, or trust company approved by the*  
32 *commissioner upon that order. No deposit so placed with a bank,*  
33 *savings and loan association, or trust company shall be subject to*  
34 *any lien or claim asserted by it or be subject to any disposition*  
35 *obligation, demand, liability, cause of action, judgment, or other*  
36 *claim, or cost or expense attendant thereon, other than as is*  
37 *permitted by the commissioner. Notwithstanding any other*  
38 *provisions of this code, the deposit shall be retained by the*  
39 *Treasurer or the bank, savings and loan association, or trust*  
40 *company approved by the commissioner and only released in*



1 accordance with the provisions of this article or pursuant to  
2 regulations or a written order of the commissioner.

3 11691.3. The commissioner shall establish a list of all insurers  
4 or reinsurers authorized to reinsure the injury, disablement, or  
5 death portions of policies of workers' compensation insurance  
6 under the class of disability insurance. An insurer or reinsurer  
7 shall be authorized to reinsure the injury, disablement, or death  
8 portions of policies of workers' compensation insurance under the  
9 class of disability insurance if it has complied with Section 11691.  
10 The commissioner shall publish a master list of those insurers or  
11 reinsurers at least semiannually. Any insurer or reinsurer  
12 providing the notification and deposit required by Section 11691,  
13 shall be added by addendum to the list at the time of approval, and  
14 shall be incorporated into the master list at the next date of  
15 publication. The list and addenda required by this section shall be  
16 published so that they are readily accessible to insurers and  
17 producers. The list and addenda required by this section shall also  
18 contain a notice that if an insurer enters into a contract of  
19 reinsurance with an insurer or reinsurer reinsuring the injury,  
20 disablement, or death portions of policies of workers'  
21 compensation insurance under the class of disability insurance  
22 that is not authorized pursuant to this section, the ceding insurer  
23 may not be able to claim that reinsurance for reserve credit.

24 11692. A certificate of authority to transact workers'  
25 compensation insurance in this state shall not be issued nor  
26 renewed to any insurer until the deposit required pursuant to  
27 Section 11691 is approved by the commissioner. The commissioner  
28 shall notify the Division of Workers' Compensation of the  
29 Department of Industrial Relations concerning the approval of  
30 every deposit made pursuant to this article.

31 11692.5. The commissioner shall collect a late filing fee from  
32 any admitted insurer that fails to deposit the securities when  
33 required by this code in the following amount:

34 (a) If the amount is outstanding for less than 31 days, 0.5  
35 percent of the outstanding amount, but in no event not less than six  
36 hundred dollars (\$600).

37 (b) If the amount is outstanding for more than 30 days but less  
38 than 61 days, an additional late filing fee in the amount of 1 percent  
39 of the outstanding balance, but in no event not less than one  
40 thousand two hundred dollars (\$1,200) shall be due.

1 (c) An additional late filing fee of 1.5 percent for every 30-day  
2 period thereafter, or fraction thereof, that the amount is  
3 outstanding, but in no event shall the total late filing fee be less  
4 than three thousand dollars (\$3,000). The late filing fees provided  
5 herein are in addition to all other rights and remedies granted the  
6 commissioner by this article.

7 11693. The deposit required pursuant to Section 11691 shall  
8 be made or adjusted on or prior to April 1 of each year in an  
9 amount as follows:

10 (a) Not less than the sum of the following amounts computed,  
11 less credits and deductions allowable with respect to reinsurance  
12 in admitted insurers, as provided under Section 11691 until  
13 January 1, 2008, as of the close of the last preceding December 31  
14 or as of any calendar quarter end as directed by the commissioner  
15 pursuant to Section 11694 in respect to workers' compensation  
16 insurance written subject to the workers' compensation laws of  
17 this state:

18 (1) The aggregate of the present values at 6 percent interest, or  
19 at the rate of the company's investment yield as determined by the  
20 NAIC Insurance Regulatory Information System Ratio Number 5  
21 for Property and Casualty Companies, whichever is lower, of the  
22 determined and estimated future payments upon compensation  
23 claims not included in paragraph (2), including in those claims  
24 both benefits and loss expenses.

25 (2) The aggregate of the amounts computed as follows:

26 For each of the preceding three years, 65 percent of the earned  
27 compensation premiums for that year less all loss and loss expense  
28 payments made upon claims incurred in the corresponding year  
29 from that 65 percent; except that the amount for each year shall not  
30 be less than the present value at 6 percent interest of the determined  
31 and the estimated unpaid claims incurred in that year, including  
32 both benefits and loss expenses.

33 (b) Not less than one hundred thousand dollars (\$100,000).

34 (c) If the aggregate amount computed under subdivision (a)  
35 exceeds fifty thousand dollars (\$50,000), not more than double the  
36 aggregate amount.

37 11694. After the first annual statement to the commissioner  
38 covering business of the insurer for a full year in this state, the  
39 deposit required pursuant to Section 11691 shall be computed from  
40 the figures shown in the last preceding report of business as of



December 31, filed with the commissioner; and shall be reported to the commissioner on or before March 1 of each year in a form prescribed by the commissioner. Notwithstanding anything to the contrary in this article, should the commissioner determine that there has been a material change in the insurer's ultimate liability for future payments upon compensable workers' compensation claims in this state, at the commissioner's discretion, the amount of the deposit shall then be fixed by the commissioner at the amount that he or she deems sufficient to secure the payment of the insurer's ultimate obligations on its workers' compensation insurance transacted in this state, and upon notification from the commissioner the insurer shall immediately but in no event less than 30 days after notification, increase the deposit as directed.

11695. Where an admitted insurer has voluntarily ceased to do in this state the business for which a deposit is required pursuant to Section 11691, the deposit shall be fixed by the commissioner at the amount that he or she deems sufficient for the protection of the beneficiaries of the policies of that insurer.

11696. In the event an insurer not in a delinquency proceeding fails to pay any compensable workers' compensation claim against it, or fails to pay, to the extent of its liability as a reinsurer, any compensable workers' compensation claim covered by a policy wholly or partly reinsured by it, the commissioner shall use the proceeds of the deposit required pursuant to Section 11691 to pay all those compensable workers' compensation claims and related expenses as described in Section 11698.02.

11697. The payment of a workers' compensation claim by the commissioner shall constitute a satisfaction of the claim to the extent of the payment made. In the event any judgment is entered on the claim, the commissioner shall file a proportionate satisfaction thereof in the office of the clerk of the court wherein the judgment is entered.

11698. (a) In the event any one of the eventualities described in paragraph (1), (2), (3), or (4), transpires, the commissioner shall immediately take control or possession of the deposit required pursuant to Section 11691 and may use the deposit to pay or procure the payment of those compensable workers' compensation claims against the insurer, and those expenses described in Section 11698.02. The proceeds of the deposit shall in that event inure to the commissioner as a trust to be held

1 *separate and apart from all other assets of the insurer held by the*  
2 *commissioner. They shall be used only for the purposes set forth*  
3 *and in accordance with the procedures established in this article.*  
4 *Once it is determined that there are no remaining undischarged*  
5 *liabilities for compensable workers' compensation claims or it is*  
6 *actuarially demonstrated that the deposit exceeds those liabilities,*  
7 *the commissioner shall transfer the remaining amount of the*  
8 *deposit to the general assets of the estate.*

9 *(1) If the commissioner is named conservator of that insurer*  
10 *pursuant to Article 14 (commencing with Section 1011) of Chapter*  
11 *1 of Part 2 of Division 1.*

12 *(2) The proper court has appointed the commissioner ancillary*  
13 *receiver of the insurer or reinsurer.*

14 *(3) A delinquency proceeding has been instituted by the proper*  
15 *court against the insurer or reinsurer.*

16 *(4) If it appears to the commissioner that any of the conditions*  
17 *set forth in Section 1011 exist or that irreparable loss and injury*  
18 *to the property and business of the insurer or reinsurer has*  
19 *occurred or may occur unless the commissioner acts immediately*  
20 *without notice and before applying to the court for any order.*

21 *(b) If the commissioner has proceeded under subdivision (a) or*  
22 *Section 11696 or 11698.3 and a deposit of securities registered*  
23 *with a qualified depository located in a reciprocal state and in the*  
24 *custody of a qualified custodian pursuant to Section 1104.9 cannot*  
25 *be released to the commissioner according to the terms of the*  
26 *agreement entered into pursuant to Section 11691 or the*  
27 *requirements of Section 11691.2 because of a delinquency*  
28 *proceeding initiated in the reciprocal state in which the qualified*  
29 *depository is located, or, if the deposit of securities registered with*  
30 *a qualified depository has been executed upon at any time by any*  
31 *creditor of an insurer and that execution has been affirmed by a*  
32 *written opinion of a court of competent federal appellate*  
33 *jurisdiction, the commissioner may, after a public hearing and*  
34 *upon a finding that deposits of securities registered with that*  
35 *depository do not allow the commissioner to discharge his or her*  
36 *responsibilities as set forth in this chapter, require workers'*  
37 *compensation insurers authorized to transact insurance in this*  
38 *state to cease and desist making any further deposits authorized by*  
39 *Section 11691 in approved securities registered with that*  
40 *depository. For the purposes of this subdivision, the term*

1 “delinquency proceeding” shall have the same meaning as  
2 contained in subdivision (b) of Section 1064.1.

3 11698.01. When the commissioner is authorized to proceed  
4 under Section 11698 he or she may do either of the following:

5 (a) Subject to Sections 11698.2, 11698.21, and 11698.22, enter  
6 into reinsurance and assumption agreements with one or more  
7 admitted solvent workers’ compensation insurers by the terms of  
8 which liability for all those obligations is reinsured and assumed  
9 by such insurer.

10 (b) Use the deposit required pursuant to Section 11691 to pay  
11 or procure payment of the insurer’s compensable workers’  
12 compensation claims and those expenses authorized in Section  
13 11698.02.

14 11698.02. The proceeds of the deposit required pursuant to  
15 Section 11691 shall be used solely to pay compensable workers’  
16 compensation claims under the insured or reinsured policies,  
17 allocated claims expense necessary to pay those claims, and the  
18 expenses connected with all proceedings or actions permitted or  
19 required by this article in furtherance of the payment of those  
20 claims, or should the commissioner pursuant to subdivision (a) of  
21 Section 11698.01 enter into reinsurance and assumption  
22 agreements with one or more reinsurers, the proceeds of the  
23 deposit shall be used to reimburse those reinsurers.

24 11698.1. From time to time and in any event at or prior to the  
25 time of the filing of his or her petition for discharge as receiver, the  
26 commissioner shall do the following:

27 (a) File with the Workers’ Compensation Appeals Board an  
28 accounting of all trust funds received and used from the proceeds  
29 of the deposit required pursuant to Section 11691.

30 (b) File with the court an accounting of all funds received and  
31 used as expenses from the general funds of the insurer.

32 11698.2. If the commissioner enters into a reinsurance and  
33 assumption agreement as provided in subdivision (a) of Section  
34 11698.01, that agreement shall provide for all of the following:

35 (a) The reinsurance and assumption of all those obligations by  
36 the reinsuring and assuming insurers.

37 (b) If there is more than one reinsurer the proportion of all those  
38 obligations assumed by each reinsurer and a method for the actual  
39 processing and payment of those obligations by the reinsurers or  
40 their representatives.

1 (c) The reimbursement of the reinsuring and assuming insurers  
2 from the deposit of the insurer in the delinquency proceeding. The  
3 provision shall conform with Section 11698.21 and shall not be  
4 effective unless approved by the Workers' Compensation Appeals  
5 Board.

6 (d) The amounts, if any, to be paid the reinsurers from the  
7 general funds of the insurer. If the agreement provides that  
8 amounts from the general funds of the insurer are to be paid to the  
9 reinsurers, those payments shall be approved by the court where  
10 the delinquency proceedings are pending.

11 (e) Any other matters as are necessary and proper to achieve  
12 the purposes of the reinsurance and assumption agreement.

13 11698.21. (a) The reimbursement provision referred to in  
14 subdivision (c) of Section 11698.2 shall provide for the transfer of  
15 the securities in the deposit to the deposits of the reinsurers.  
16 Thereafter, except as provided in subdivision (b), the deposit of the  
17 reinsuring and assuming insurers shall be security for the payment  
18 of all of those obligations assumed by the agreement as well as  
19 those obligations on workers' compensation insurance transacted  
20 in this state by the reinsurer, provided, however, that in determining  
21 the amount which shall remain on deposit as security for those  
22 obligations that are reinsured and assumed, the method prescribed  
23 by paragraph (1) of subdivision (a) of Section 11693 shall be used  
24 without any limitation as to time. In providing for the transfer of  
25 the securities the agreement may provide for their direct transfer  
26 to the deposit account of the reinsurers, or, if the securities  
27 deposited are in denominations or units as to make the equitable  
28 transfer to more than one reinsurer impossible, it may provide  
29 either for a formula under which the transfers may be made and  
30 differences in value reconciled by payments or credits among the  
31 reinsurers or for the sale of those securities by the commissioner  
32 and the reinvestment of the proceeds in other securities in amounts  
33 that can be so equitably transferred.

34 (b) The agreement shall provide that if it appears that the  
35 market value of the securities on deposit will exceed the  
36 obligations assumed by the reinsurers, the commissioner may  
37 withhold the transfer of a portion of the deposit and may after a  
38 two-year period enter into a final settlement with the reinsurers  
39 with respect thereto at which time any excess in that deposit shall



1 *be transferred to the general assets of the insurer in the*  
2 *delinquency proceeding.*

3 *11698.22. The commissioner shall not enter into an*  
4 *agreement with an insurer if its reinsurance and assumption of*  
5 *liability will impair its solvency or render its further transaction*  
6 *of business hazardous under subdivision (d) of Section 1011.*

7 *11698.3. (a) If the insurer is a member insurer of the*  
8 *California Insurance Guarantee Association (the association) and*  
9 *has been the subject of an order of liquidation or receivership with*  
10 *a finding of insolvency which has been entered by a court of*  
11 *competent jurisdiction the association then becomes obligated to*  
12 *pay compensable workers' compensation claims arising under the*  
13 *insurer's policies, which are otherwise "covered claims" as*  
14 *defined in Article 14.2 (commencing with Section 1063) of*  
15 *Chapter 1 of Part 2 of Division 2. The commissioner shall*  
16 *immediately take control or possession of the deposit required*  
17 *pursuant to Section 11691 and shall transfer the deposit to the*  
18 *association.*

19 *(b) The association shall use the proceeds of the deposit and*  
20 *any interest earned thereon, for the payment of compensable*  
21 *workers' compensation claims arising under the insolvent*  
22 *insurer's policies and which are otherwise covered claims, as*  
23 *defined in Article 14.2 (commencing with Section 1063) of*  
24 *Chapter 1 of Part 2 of Division 2, and all expenses related thereto.*

25 *(c) The association shall make a full report and accounting of*  
26 *the disposition of the deposit on or in the form and at the times as*  
27 *the commissioner shall request, including a report of all interest*  
28 *income earned on the deposit.*

29 *(d) At the time all of the insolvent insurer's California workers'*  
30 *compensation claims liabilities are discharged, or at the time it is*  
31 *actuarially determined that the remaining proceeds, and any*  
32 *interest earned thereon, exceed those liabilities, the association*  
33 *shall return the surplus to the insolvent insurer's estate.*

34 *11699. Unless the deposit required pursuant to Section 11691*  
35 *is withdrawn by the commissioner pursuant to the authority*  
36 *granted him or her by this article, it, or any remainder thereof, may*  
37 *be repaid to the insurer either upon satisfactory showing to the*  
38 *commissioner that every liability to pay compensable workers'*  
39 *compensation claims has been assumed and reinsured with a*  
40 *solvent admitted insurer or fully paid and discharged. In the event*



1 *the insurer remains admitted for workers' compensation*  
2 *insurance, or desires to reinsure the injury, disablement, or death*  
3 *portions of policies of workers' compensation under the class of*  
4 *disability insurance, then it must maintain at least the minimum*  
5 *deposit required by Section 11691.*

6 *11700. The deposit required pursuant to Section 11691, unless*  
7 *withdrawn by the commissioner, shall be used only for the payment*  
8 *of compensable workers' compensation claims and expenses as*  
9 *provided in Section 11698.02 as long as there remains unpaid any*  
10 *claim or any part thereof.*

11 *11701. The commissioner may revoke the certificate of*  
12 *authority to transact workers' compensation insurance or to*  
13 *reinsure the injury, disablement, or death portions of policies of*  
14 *workers' compensation under the class of disability insurance in*  
15 *this state of any insurer failing to comply with the requirements of*  
16 *this article. The power vested in the commissioner by this section*  
17 *is additional to any and all other powers and remedies vested in*  
18 *the commissioner by law. Failure to make the deposit required by*  
19 *this article within the required time shall be deemed to constitute*  
20 *a condition of hazard as set forth in Section 1011.*

21 *11702. The provisions of this article shall not apply to*  
22 *workers' compensation insurance covering those persons defined*  
23 *as employees by subdivision (d) of Section 3351 of the Labor Code.*

24 *11703. An insurer desiring to write workers' compensation*  
25 *insurance shall maintain or provide occupational safety and*  
26 *health loss control consultation services certified by the Director*  
27 *of Industrial Relations pursuant to Section 6354.5 of the Labor*  
28 *Code.*

29 *SEC. 3. Section 12376 of the Insurance Code is amended to*  
30 *read:*

31 *12376. (a) If an underwritten title company is placed into*  
32 *bankruptcy, receivership, or conservation by the commissioner,*  
33 *each title insurer operating under an underwriting agreement with*  
34 *the underwritten title company during the six months prior to the*  
35 *earliest of the conservation, bankruptcy, or receivership shall be*  
36 *liable for its proportionate share of the commissioner's costs and*  
37 *any escrow and subescrow account shortages as determined by the*  
38 *calculations set forth in subdivisions (b) and (c).*

39 *(b) If, during the six months prior to the earliest of the*  
40 *establishment of a conservation, bankruptcy, or receivership under*



1 subdivision (a), the underwritten title company was authorized by  
2 underwriting agreements to issue title policies for more than one  
3 title insurer, the liability of each title insurer is determined by  
4 multiplying the amount of the total escrow and subescrow  
5 shortages, as well as the costs, and expenses, as set forth in  
6 subdivision (c), by that title insurer's percentage of the  
7 underwritten title company's net premiums for policies issued by  
8 each title insurer during the 12-month period preceding the earliest  
9 of the establishment of the conservation, bankruptcy, or  
10 receivership, with each title insurer's liability pursuant to this  
11 subdivision to be referred to as its proportionate share.

12 (c) When determining the total proportionate liability of each  
13 title insurer, the commissioner shall include the following:

14 (1) The commissioner's costs and expenses of seizing and  
15 taking control of the underwritten title company's offices,  
16 operations, and assets.

17 (2) The commissioner's costs and expenses of handling,  
18 adjusting, and closing all subescrow and escrow accounts,  
19 including the costs and expenses of determining whether shortages  
20 exist in any subescrow and escrow accounts.

21 (3) Other costs and expenses incurred by the commissioner in  
22 connection with borrowing from the Insurance Fund pursuant to  
23 subdivision (g) and foregone earnings or interest of the Insurance  
24 Fund resulting from the borrowing.

25 As used in this subdivision, "commissioner's costs and  
26 expenses" includes the costs and expenses of all agents and  
27 contractors retained by the commissioner in performing functions  
28 set forth in this subdivision, and "subescrow" and "escrow"  
29 means title subescrows and escrows. These calculations shall  
30 result in 100 percent of the shortage, costs, and expenses being  
31 proportionately allocated to each title insurer authorized to issue  
32 title policies in the last six months preceding the underwritten title  
33 company being placed into bankruptcy, receivership, or  
34 conservation.

35 (d) (1) The commissioner shall make an initial estimate of the  
36 total shortage in the escrow and subescrow accounts and the  
37 commissioner's costs and expenses as provided in subdivision (c)  
38 and shall provide this estimate in writing to each title insurer  
39 determined to have liability under this section as soon as  
40 practicable. The initial estimate shall be substantiated by a

1 summary of the accounting information pertinent to the  
2 commissioner's estimate of the escrow and subescrow shortfalls  
3 and the commissioner's costs and expenses.

4 (2) The commissioner shall make further estimates, as  
5 necessary, of the total shortage in the escrow and subescrow  
6 accounts and the commissioner's costs and expenses as provided  
7 in subdivision (c) and shall provide the estimates in writing to each  
8 title insurer determined to have liability under this section. These  
9 estimates shall be substantiated by a detailed summary of pertinent  
10 accounting information.

11 (3) After receiving an estimate pursuant to paragraphs (1) and  
12 (2), each title insurer having liability under this section shall,  
13 within 30 days after written notification, deposit its proportionate  
14 share of the shortage, costs, and expenses into an escrow account  
15 established by the commissioner for the purpose of reimbursement  
16 to subescrow or escrow accountholders, reimbursement to the  
17 commissioner in the event that the commissioner advances or has  
18 advanced payments to subescrow or escrow accountholders, or  
19 payment or reimbursement of the commissioner's costs and  
20 expenses pursuant to subdivision (c). If a title insurer fails to make  
21 a payment required by this subdivision within the 30-day period,  
22 the title insurer shall pay a penalty calculated at the rate of 10  
23 percent per annum on the unpaid amount until the payment is  
24 received by the commissioner.

25 (e) Nothing in this section relieves a person of liability under  
26 any other provision of law that he or she may have for a shortage  
27 as set forth in subdivision (a). A title insurer, on becoming liable  
28 for a shortage as set forth in this section, is entitled to enforce every  
29 available remedy, or bring any cause of action that would have  
30 been available to a person compensated by the title insurer.

31 (f) A title insurer shall be entitled to make a claim for  
32 reimbursement for subescrow or escrow shortages paid to  
33 subescrow or escrow accountholders and for payments of its  
34 proportionate share pursuant to subdivision (c). Those claims shall  
35 be given the same preference as those claims referenced in  
36 paragraph (2) of subdivision (a) of Section 1033.

37 (g) A title insurer shall be entitled to make a claim for  
38 reimbursement for payment of its proportionate share of the  
39 commissioner's costs and expenses paid pursuant to subdivision  
40 (c). Those claims shall be given the same preference as those

claims referenced in paragraph (2) of subdivision (a) of Section 1033. The commissioner shall return to each title insurer its proportional share of any funds remaining in the escrow account after all liabilities in subdivision (a) have been satisfied.

(h) In order to minimize potential losses and negative impacts on consumers having money in escrow accounts held by an underwritten title company taken into conservation, bankruptcy, or receivership by the commissioner, the commissioner shall hire all necessary escrow consultants or other experts necessary to achieve this goal.

(i) The commissioner may borrow from the Insurance Fund to cover shortages in subescrow or escrow accounts and to pay costs and expenses set forth in subdivision (c).

~~SEC. 2.~~

SEC. 4. Section 12377 of the Insurance Code is amended to read:

12377. (a) All escrow funds received by an underwritten title company that are subject to Section 12413.5 shall not be considered part of the estate of the underwritten title company for purposes of liquidation, receivership, bankruptcy, or conservation pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1.

(b) Where an underwritten title company is placed into conservation, receivership, or bankruptcy and the escrow accounts held by the company are found to have shortages, the department, conservator, liquidator, receiver, or bankruptcy trustee shall do everything reasonably possible to trace these moneys to other depository accounts or assets.

(c) Any real or personal property traceable to shortages in the escrow accounts shall not be considered part of the estate available to other claimants under Section 1033. Those assets shall be liquidated and paid in the following order: (1) if the commissioner has paid or advanced funds to subescrow or escrow accountholders from sources other than the escrow established pursuant to subdivision (c) of Section 12376, they shall be paid to the commissioner to the extent that the commissioner has not been repaid by title insurers having liability under Section 12376, (2) they shall be deposited into an escrow established pursuant to subdivision (c) of Section 12376, and (3) they shall be directly reimbursed to the title insurer or insurers that have reimbursed

1 escrow depositors under Section 12376. In no event shall a title  
2 insurer be reimbursed an amount in excess of its liability as  
3 determined in Section 12376.

4 *SEC. 5. Sections 1, 2, 3, and 4 of this act shall become*  
5 *operative only if Assembly Bill 2007 is enacted and becomes*  
6 *effective on or before January 1, 2003.*

